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Judgment of the Court in Case C-147/24 | [Safi] ¹

The mother of a minor child, that child being a Union citizen, may enjoy a derived right of residence in the Member State where she resides with her son and of which he holds the nationality, even if she already has a right of residence in another Member State

A mother of Moroccan nationality resides in the Netherlands with her spouse, who holds Netherlands and Moroccan nationality, and their minor son, who holds Netherlands nationality. The mother wishes to obtain a derived right of residence in the Netherlands in order to continue to live with her son, a Union citizen. Her application has been rejected on the ground that she already holds a right of residence in Spain, and that her minor child could accompany her to that Member State. The Court, however, stresses the importance of respect for the family life which that child currently leads with both his parents, on whom he is dependent, in the Netherlands. There is a genuine risk that the child will be separated from his father if that father does not obtain the right to reside in Spain. If that is the case, a derived right of residence in the Netherlands should be granted to the mother. In addition, such a right should also be granted to her if it were to be found that relocation to Spain is contrary to the child's best interests.

V, of Moroccan nationality, legally resided and worked in Spain from 1999 to 2014. Since her marriage in 2014, she has lived in the Netherlands with her spouse, who was born there and who holds Moroccan and Netherlands nationality. Their marriage was entered in the civil status registers of the Netherlands municipality in which they reside. However, V does not hold a residence permit for the Netherlands. In 2015, a son, who holds Netherlands nationality, was born to the couple and who the couple care for together. V's spouse does not receive any occupational income on account of his state of health and, for that reason, is dispensed in part from the obligation to work. On the other hand, he receives social assistance benefits.

In 2020, V made an application for a derived right of residence in the Netherlands. In 2021, the Netherlands authorities rejected her application, taking the view that she had a right of residence in Spain. In addition, those authorities ordered her to go to Spain immediately and therefore to leave Netherlands territory. V then brought an action before the District Court, The Hague (Netherlands), which found that there is a relationship of dependency between V and her minor child, a Union citizen, and which decided to refer the matter to the Court of Justice.

In its judgment, the Court first observes that in the scenario where V no longer has a right of residence in Spain, the Netherlands authorities are required to grant her a derived right of residence, due to that relationship of dependency. If V were to be refused such a right of residence, her minor child, a Union citizen, would be compelled to accompany his mother and to leave EU territory. Such a departure would deprive that child of the genuine enjoyment of the substance of his rights as a Union citizen.

Next, the Court notes that, if V still has a right of residence in Spain, that fact cannot, in itself, rule out the possibility that V

may enjoy a derived right of residence in the Netherlands. If V were refused such a right of residence, her child would then be compelled to accompany his mother to Spain and therefore to leave the Netherlands, his Member State of residence and of which he is a national, which would be liable to infringe some of his fundamental rights.

In that context, the Court stresses the importance of respect for the family life which that child currently leads with both his parents, on whom he is dependent, in the Netherlands. There is a genuine risk that that family life may not be continued in Spain and that the child will be separated from his father if the latter does not obtain the right to reside there on a long-term basis. In those circumstances, and subject to verification by the Netherlands court, the Court of Justice finds that V should be granted a derived right of residence in the Netherlands, since the refusal to grant her such a right would harm the family unit and would deprive that child of the opportunity, which he has enjoyed since birth, to maintain regular personal relations and regular contact with both his parents.

The Netherlands court must also verify whether compelling the child to relocate to Spain would be contrary to his best interests. In the present case, the child does not speak Spanish, but Dutch. In addition, he did not speak until he was five years old and has speech and language difficulties, and is therefore receiving specialised education in the Netherlands for pupils in need of specific support. If that court were to find that such a relocation to Spain is contrary to the best interests of the child, V should be granted a derived right of residence in the Netherlands also on that ground.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.